

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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RONALD P. PASSATEMPO, TRUSTEE,	)
On behalf of the Samuel Pietropaolo	)
Irrevocable Trust, SAMUEL PIETROPAOLO,	)
GRANTOR to the Samuel Pietropaolo	)
Irrevocable Trust, and PATRICIA D.	)
PIETROPAOLO, BENEFICIARY of the	)
Samuel Pietropaolo Irrevocable Trust,	)
	)
Plaintiffs,	)
	)
v.	)
	)
FREDERICK V. McMENIMEN III, BARRY	)
G. ARMSTRONG, NEW ENGLAND	)
ADVISORY GROUP, LLC, 1717 CAPITAL	)
MANAGEMENT COMPANY, NATIONWIDE)	)
PROVIDENT (f/k/a Provident Mutual Life	)
Insurance Company), and NATIONWIDE	)
FINANCIAL SERVICES, INC.,	)
	)
Defendants.	)
	)

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**MOTION TO SUBSTITUTE EXECUTOR OF PLAINTIFF  
SAMUEL PIETROPAOLO'S ESTATE AS A PARTY**

Plaintiffs Ronald P. Passatempo and Patricia D. Pietropaolo hereby move pursuant to Fed. R. Civ. P. 25(a) for substitution of the executor of Samuel Pietropaolo's ("Mr. Pietropaolo") estate as a party in this matter. As grounds therefore, Plaintiffs state that Mr. Pietropaolo, the third named Plaintiff in this matter, passed away on April 1, 2005. A Suggestion of Death was filed with the Court on April 4, 2005 (Docket No. 14). As indicated by the Appointment of Temporary Executor form attached hereto at Exhibit A (Massachusetts Probate and Family Court, Suffolk Division, No. 05P1362EP-1), Mr. Pietropaolo's son, Samuel F. Pietropaolo, was appointed as temporary executor of Mr.

Pietropaolo's estate on June 24, 2005, which appointment is to last for ninety days.

Plaintiffs expect that Samuel F. Pietropaolo will be reappointed as executor prior to or upon expiration of said ninety days. Plaintiffs further state that Mr. Pietropaolo's claims survive his death pursuant to both federal and Massachusetts common law, as they are fundamentally remedial rather than penal in nature and seek compensatory rather than punitive relief. See, e.g., Kirk v. Commissioner of Internal Revenue, 179 F.2d 619; Sheldone v. Marino, 398 Mass. 817 (1986); Lyon v. Triram Corp., 2004 Mass. Super. LEXIS 496 (Oct. 27, 2004).

In the event that one or more of the Defendants opposes the herein Motion, Plaintiffs respectfully request leave to file a memorandum of law in reply.

WHEREFORE, Plaintiffs respectfully request that Samuel F. Pietropaolo, executor of Plaintiff Samuel Pietropaolo's estate, be substituted as a party in this action pursuant to Fed. R. Civ. P. 25(a).

Respectfully submitted,

Plaintiffs RONALD P. PASSATEMPO,  
TRUSTEE, On behalf of the Samuel  
Pietropaolo Irrevocable Trust, SAMUEL  
PIETROPAOLO, GRANTOR to the Samuel  
Pietropaolo Irrevocable Trust, and  
PATRICIA D. PIETROPAOLO,  
BENEFICIARY of the Samuel Pietropaolo  
Irrevocable Trust,

By their counsel:

/s/ David M. Burkoff

Howard M. Cooper (BBO #543842)  
David M. Burkoff (BBO #657447)  
Todd & Weld LLP  
28 State Street  
Boston, MA 02109  
(617) 720-2626

Dated: June 30, 2005

Local Rule 7.1(A)(2) Certification

I hereby certify that I have conferred with defense counsel in a good faith attempt to resolve or narrow the issues presented herein.

/s/ David M. Burkoff

## Exhibit A

**Commonwealth of Massachusetts**  
**The Trial Court**  
**Probate and Family Court** *11e*

Suffolk Division

Docket Number 05P1362EP-1

ESTATE OF

Samuel Pietropaolo a/k/a Sabatino Pietropaolo

**APPOINTMENT OF TEMPORARY EXECUTOR**

It is decreed that Samuel F. Pietropaolo  
of Carlisle in the County of Middlesex

Is appointed temporary executor / ~~executrix~~ of the estate of Samuel Pietropaolo a/k/a Sabatino Pietropaolo  
First giving bond with / without surety for the due performance of said trust. This appointment shall expire  
in ninety days.

6/24/05  
Date

JEREMY A. STAHLIN  
Justice  
by John Kelly Jr.  
Asst Reg.

SPFC - 03/2004

JUN 24 2005  
Suffolk, S.S. \_\_\_\_\_ Probat  
(date)

A true copy, Certified:

Richard Jannella